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November 28, 2007

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djackson@stites.comCommissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450**Attention: Charles Steven Brantley, Senior Petitions Attorney, Office of Petitions****Fax: 571-273-8300**Re: Serial No.: 10/784,812
First Inventor: HOCKMANConfirmation No.: 1182
Docket No.: P07698US00/WEJ**REMARKS**

As noted in my telephone message of November 27, 2007 and our subsequent telephone conference of November 28, 2007, the Decision on Petition mailed November 23, 2007 dismissing applicant's Petition filed on May 22, 2007 was not correct in view of all of the timely filings made in this application. Therefore, the Petition should have been granted, and such action is again solicited for the following reasons.

In the Decision, it was noted that a proper response was filed on January 31, 2007 to the outstanding Office Action of October 12, 2006. While that response was lost by the Patent Office, applicant did provide evidence of its filing so that the Decision indicated that the response after final was now to be considered (and an Advisory Action in response thereto was issued with the Decision). However, for the purposes of the Petition, the specified "reason" that the application was abandoned was the failure to respond to the final action - see the Notice of Abandonment mailed May 11, 2007.

More importantly, and regardless of the failure of the Patent Office to consider the response after final which was lost, the Notice of Abandonment was still improper on the record which was before the examiner at the time that (and well before) the Notice was mailed. As evident from the record, applicant had filed a Notice of Appeal on March 28, 2007 (over a month before the Notice of Abandonment was mailed), so there could be no abandonment for failure to reply to the final action at the time of mailing of the Notice of Abandonment.

Upon receiving the Notice of Abandonment, and realizing that the response after final was lost by the Patent Office, applicant immediately filed the Petition on May 22, 2007. No action was taken on this Petition for over six months; and action was only taken after repeated telephone calls by applicant to various officials at the Patent Office (most of which were ignored or unanswered).

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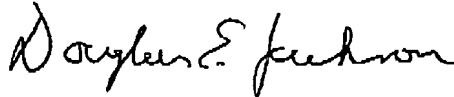
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The action which was finally taken was to hold in the Decision that the application was abandoned not "for failure to file a proper response the final action" as stated in the Notice being appeal from, but rather for applicant's failure "to file an appeal brief". Firstly, the reason for abandonment was made clear in the Notice of Abandonment, and that was failure to file a response to the final action. Secondly, when the Petition was filed, the appeal brief was not due and applicant could not have anticipated that the Patent Office would fail to take action for over six months to correct a self-evident mistake. Third, it is questionable whether applicant could file an appeal brief when the status of the application was abandoned (see e.g., MPEP § 508.02 Papers Received After Patenting or Abandonment; and there appears no section which would permit an appeal brief to be filed since it would not be part of the Petition). Therefore, to hold for the first time in this Decision that applicant's failure to file an appeal brief is the reason for abandonment is unreasonable and improper. At the least, the Decision in all fairness should have reset the period for filing of the appeal brief in view of the compound mistakes made by the Patent Office and applicant's best efforts to comply with all the rules.

Finally, and dispositive of the "new" reason for abandonment even without regard to the equities, applicant filed together with the Notice of Appeal on March 28, 2007 a PRE-APPEAL BRIEF REQUEST. Filing of such a Request results in the appeal brief being due, as noted in the OG Notice of July 12, 2005, as follows (emphasis added): "The time period for filing an appeal brief will be reset to be one month from mailing of the decision on the request, or the balance of the two-month time period running from the receipt of the notice of appeal, whichever is greater." Therefore, applicant's appeal brief is (still) not yet due, since no decision on that Request has been issued. This also establishes that the present application is not abandoned for the new reason of failure to file an appeal brief.

In view of all of the above, it is requested that the Petition to Withdraw Holding of Abandonment filed May 22, 2007 be immediately granted. Then, the application should be returned for action by the Patent Office on the still outstanding Pre-Appeal Brief Request.

Respectively submitted,

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